

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 423 CUTTACK, THURSDAY, MARCH 14, 2013 / FALGUNA 23, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 2nd March 2013

No. 2100—li-I(S)-12/2003-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th December 2012 in I. D. Case No. 53 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Tata Refractories Ltd., Belpahar and its workman Shri Pitambar Tandia, At Abankela, P.O. Remunda, P.S. Bhasma, Dist. Sundargarh was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 53 OF 2003

Dated the 7th December 2012

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of
M/s Tata Refractories Ltd.,
Belpahar.

.. First Party—Management

And

Its workman
Shri Pitambar Tandia,
At Abankela,
P.O. Remunda,
P.S. Bhasma,
Dist. Sundargarh.

.. Second Party—Workman

Appearances :

Shri R. K. Purohit, .. For the First Party—Management
Advocate.

Shri P. K. Dash, Advocate .. For the Second Party—Workman

AWARD

This Award arises out of a reference made by the Government of Odisha, Labour & Employment Department under Section 10 (1) (c) of the I. D. Act, 1947 vide their Notification No. 9654—li-1(S)-12/2003-LE., dated the 1st October 2003 for adjudication. The schedule of reference is as follows :

“Whether the dismissal of Shri Pitambar Tandia, ex-Senior Attendant of High Alumina Department from services by the management of Tata Refractories Ltd., Belpahar with effect from the 21st April 2001 is legal and/or justified ? If not, to what relief Shri Tandia is entitled ?”

2. The case of the second party workman as per his statement of claim is that he was appointed as a Helper in the office of the first party management in the year 1979. He was not provided with any residential accommodation. He met an accident in which there was fracture of 4 bones of his chest for which, he took bed rest with effect from the 4th November 2000. Being referred by the Chief Medical Officer, Tata Refractories Limited, Belpahar, he was admitted in the V.S.S. Medical College Hospital, Burla. Due to such reason, he could not attend his duties but the first party management in a vindictive manner initiated a departmental proceeding and ultimately dismissed him from service. According to the workman, the punishment of dismissal is not proportionate to the charges levelled against him. He further claims that he was not given proper opportunity of hearing of disciplinary proceeding with such averments, he prayed for reinstatement with all consequential service benefits.

3. The first party management filed written statement in which they asserted that the second party was appointed as USL (M) vide Appointment Order No. PD/3716, dated 8-10-1979, he was confirmed in the service on 8-4-1980. He was promoted to the post of Helper with effect from the 1st November 1980 and was confirmed in the said post vide Order, Dt. 22-4-1981. He was transferred to the Dolomite Department with effect from the 17th November 1994 and subsequently to High Alumina Department with effect from the 7th June 1999. The management alleged that the workman was in the habit of absenting frequently from December 1980 which resulted in dislocation of work and adversely affected the Company. For his absence he was counselled and charge-sheeted several times and in almost all cases he admitted his mistakes and begged excuse. He was several times imposed with punishment like suspension and warnings. For his continuous absence without permission and without satisfactory cause for 104 days between July and November 2000, he was issued with a charge-sheet bearing No. CS/222, Dt. 26-12-2000. Having received the charge-sheet, he did not submit any explanation and the management decided to conduct domestic enquiry into the allegations vide letter No. HR/234, Dt. 19-1-2001. One Shri S. A. Habib was appointed as Enquiry Officer. On 8-3-2001 the enquiry was conducted in the presence of the workman and the representative of the management. The workman gave statement before the Enquiry Officer

admitting his absence without information and without sufficient cause. The Enquiry Officer submitted his findings holding the workman guilty of misconduct of habitually/continuously absenting from duty without sufficient cause under Clause No. vi & xxix of the Certified Works Standing Order of the Company. A copy of the finding of enquiry was sent to the workman vide letter, Dt. 27-3-2001 by Regd. Post but the same returned undelivered with postal remark "Addressee long absent". Then the management concurring with the findings of the Enquiry Officer dismissed the workman from service with effect from the 21st April 2003. According to the management since the workman was dismissed after a fair domestic enquiry he is not entitled to any relief.

4. After receipt of the copy of the written statement the workman filed a rejoinder wherein he mentioned that due to an accident he suffered a lot and was hospitalised in the factory hospital and then referred to V.S.S. Medical College Hospital, Burla. The first party was aware of such fact but arbitrarily and illegally proceeded with the enquiry.

5. On the pleadings of the parties, the following issues have been settled for adjudication :—

ISSUES

- (i) "Whether the domestic enquiry conducted by the management was fair and proper ?
- (ii) Whether the dismissal of Shri Pitambar Tandia, ex-Senior Attendant of High Alumina Department from services by the management of Tata Refractories Ltd., Belpahar with effect from the 21st April 2001 is legal and justified ?
- (iii) To what relief, the workman Shri Tandia is entitled ?"

6. The workman examined himself as sole witness and relied upon documents which are marked Exts. A to D. From the side of the management one Shri Sibaram Sahu, the Chief Manager, Human Resource & Management and Administration of the first party was examined as sole witness and through him, several documents were marked as Exts. 1 to 53.

FINDINGS

7. *Issue No. (i)*—This issue has already been decided by this Court by an elaborate Order, Dt. 29-6-2006 and it has been held that the domestic enquiry is not fair and proper. Since the management has not challenged this order in any higher forum there is no need to make any further discussion on this issue.

8. *Issue No. (ii)*—There is no dispute that Shri Pitambar Tandia, the second party, was a workman under the first party management and he was appointed initially as USL (M) vide Order, Dt. 8-10-1979 (copy of the Appointment Order marked as Ext. 1). There is also no dispute that he was promoted to the post of Helper with effect from the 1st November 1980 (copy of promotion letter marked as Ext. 4). He was transferred to Dolomite Department with effect from the 17th November 1994 and subsequently to High Alumina Department with effect from the 7th June 1999 (copy of the transfer Order marked as Ext. 5). The management has proved a copy of charge-sheet No. CS/222, Dt. 26-12-2000 marked as Ext. 6. As per this document it was intimated to the

workman Shri Tandia that in spite of several punishments in the past for acts of misconduct of habitual/continuous absence, he has not shown any improvement for his performance and he again remained absent without permission and without sufficient/satisfactory cause on several days. As per the charge-sheet, the workman remained absent from duty from 19th to 27th July 2000, 31st July 2000, 2nd August 2000 and 12th August 2000, 20th to 25th August 2000, 1st September 2000 to 3rd September 2000, 6th September 2000, 8th September 2000, 9th September 2000, 12th September 2000 to 30th September 2000 and whole months of October 2000 and November 2000. The workman was called upon to submit his explanation or representation within a period of 48 hours of receipt of the charge-sheet. The management witness deposed that the workman received the charge-sheet and has signed in token thereof. The workman does not seriously dispute the fact of receipt of a copy of the charge-sheet. The management witness further deposed that the workman Shri Tandia did not submit any explanation to the charge-sheet within stipulated time and the management decided to conduct domestic enquiry into the allegations made against him vide letter No. HR/234, Dt. 19-1-2001 appointing Shri S. A. Habib as Enquiry Officer and Ashok Mishra as the management representative. A copy of the said letter has been marked as Ext. 7. The management witness deposed that since the workman was not coming for duty, copies of the said letters were sent to him in his present and permanent postal address as recorded in his personal file but both the letters returned undelivered. In the former case of return, there was postal remark "Addressee refused" and in the later, the remark was "Addressee is absent". The workman in his evidence has not specifically deposed that he refused to accept the letters sent through Registered Post and therefore I am constrained to hold that he refused to accept the letter, Dt. 19-1-2001 and accordingly the management proceeded with the domestic enquiry. It is further deposed by the management witness that on 8-3-2001 the domestic enquiry against the workman was started and the workman as well as the representative of the management attended the same. He also deposed that the workman adduced his statement and put his signature as a token of his understanding the proceeding and admitting the correctness of the recording. The enquiry proceeding, Dt. 8-3-2001 has been marked on behalf of the management as Ext 14. This document reveals that the contents of the charge-sheet No. CS/222, Dt. 26-12-2000 was read over to the workman Shri Tandia by the Enquiry Officer. This document further reveals that the Enquiry Officer asked the workman to produce witness or documentary evidence in his defence but he admitted the charges. The Enquiry Officer then proceeded to record the statement of Mr. A. K. Mishra, the representative of the management who stated before him about the period of absence of the workman and about his previous punishments. It appears that the statement was recorded in presence of the workman who put his signature on each page of the proceeding of enquiry. The Enquiry Officer has specifically recorded the statement of the workman and obtained his signature after endorsing a certificate that he read over the statement recorded in Odia explained the same to the workman who admitted it to be correct. The workman does not specifically depose before this Court that he did not make any statement before the Enquiry Officer. On perusal of the statement of the workman recorded by the Enquiry Officer I find, he made a categorical statement that he was staying at Abenkela under P.S. Bhasma, Dist Sundergarh which is about 35 kilometers from the Company's main gate. For such long distance he could not attend his duty and remained absent.

He admitted that he was punished several times, warned for 5 times and suspended for 4 times. During his statement before the Enquiry Officer he requested to provide a quarter in the company premises, so that he can perform his duty sincerely. The workman further assured not to remain absent in future, once he is provided with quarter and he begged excuse for the absence period under the charge. It appears that on the basis of the statement of the workman, the Enquiry Officer was satisfied about his misconduct. He submitted his report on Dt. 10-3-2001. A copy of enquiry report has been marked as Ext. 16. The Enquiry Officer concluded that the workman Shri Tandia habitually/continuously absented from duty without permission and without sufficient cause which is misconduct under Clause vi & xxix of Order No. 21 of the Certified Works Standing Orders of the Company. The report of the Enquiry Officer was communicated to the workman as per Regd. Post, Dt. 27-3-2001, the copy of which has been marked as Ext. 18. The letters sent to the workman however, returned unserved as would reveal from the returned postal package marked as Ext. 17. As per the endorsement in the Ext. 17 the workman was found absent in his address (Village Abankela, Sundargarh). Since the workman was absent from duty and registered letters sent to him in his residential address returned back, it can safely be said that the management was not at fault in communicating the enquiry report to him. The management has further proved one registered letter, Dt. 21-4-2001 marked as Ext. 20 in which it was intimated to him that the misconduct (absence from duty during the period mentioned in the charge-sheet) was of serious in nature and habitual which warranted the punishment of dismissal. The workman was communicated that the management has decided to dismiss him from service with immediate effect. On a careful perusal of the evidence on record I find, the workman Shri Tandia participated in the domestic enquiry and since he admitted his guilt of remaining absent unauthorisedly for the period mentioned in the charge sheet, he was found to be guilty of misconduct under the Clause vi & xxix of paragraph 21 of the Certified Works Standing Order. The workman admitted before the Enquiry Officer that for similar misconduct he was warned on 5 occasions and suspended for 4 times. While deposing in this Court also the workman has admitted that on several occasions he was penalised for unauthorised absence. Therefore, it is proved that the workman Shri Tandia on several occasions remained absent from duty and since the cause was not satisfactory he was punished on several occasions prior to the charge-sheet, Dt. 26-12-2000. It appears that the management taking into consideration the cases of previous misconduct of the workman decided to impose major punishment of dismissal of the workman. During course of hearing the management has adduced evidence to prove that the domestic enquiry was conducted in a fair manner giving reasonable opportunity to the workman and all procedures were followed consistent with the principles of natural justice. The workman has failed to point out any act of unfair labour practice or victimisation so as to blame the management in conducting the domestic enquiry. However, the domestic enquiry has already been held to be not fair and proper vide Order, Dt. 29-6-2006 of this Court and the said order was not challenged by the management in any higher forum.

9. The workman claims that he was not provided with a quarter in the company premises and he was travelling about 35 kilometers per day to attend the office and only for such reason he could not attend his duty properly. While being examined by the Enquiry Officer, he has not stated anything about his medical treatment but after long lapse of time when he was dismissed from service, he

has come up with a case that he met an accident in the year 2000. Besides his oral evidence he filed some documents regarding his medical treatment. The Ext. A is a copy of medical reference issued by a Doctor of Tata Refractories Limited, TRL Hospital, Belpahar who attended the workman on 6-11-2000. As per this document, he found old injury, multiple fracture of ribs. He referred the workman to V.S.S. Medical College Hospital, Burla for treatment in the Orthopedics Department. The fact regarding injury to the ribs of the workman is also supported from the entry, Dt. 6-11-2000 in his medical service book marked Ext. C. The workman has also filed one medical certificate issued by one Medical Officer of the V.S.S. Medical College Hospital, Burla in the department of Ortho Surgery which is marked as Ext. B. As per this document the workman Shri Tandia was treated in the said Medical College Hospital from 8-11-2000 and he was advised to take rest from 8-11-2000 to 17-12-2000. He was certified to be fit to resume his duty on 18-12-2000. Even if the documents regarding medical treatment furnished by the workman are accepted, then also, the same only refer to his incapacity to perform duty from 6-11-2000 to 18-12-2000. In the charges, Dt. 26-12-2000, however, there is clear mention about his unauthorised absence during the month of July, August, September and October but the cause of such absence is not explained by the workman. Under the above circumstances I am constrained to hold that the workman failed to substantiate that he was prevented by sufficient cause to attend his duties during the period specifically mentioned in the charge-sheet.

10. It is submitted by the learned advocate for the workman that the charge has been framed for same period of absence for which the workman was previously penalised. On a close scrutiny of the documents filed by the management I find, for none of the period under the charge-sheet, Dt. 26-12-2000, the workman was previously penalised. His previous punishments referred to the period for the month of January 2000 and February 2000 (Ext. 52), March 2000, April 2000 (Ext. 53), May 2000, June 2000, July 2000 (up to 18th July) (vide Ext. 50), June 1999 and July 1999 (Ext. 48), August 1998 (Ext. 45), September 1995 (Ext. 43), October 1995 (Ext. 42), November 1995 (Ext. 41), December 1995 (Ext. 40). It further reveals from the above documents that most of the times the workman admitted about his absence without permission and without sanction of his leave. He was allowed to perform duties on his begging excusal.

11. It is crystal clear from the evidence on record and the discussions made above that the workman Shri Tandia was in the habit of remaining absent from duty but the question is whether he should have been removed from service and if the major punishment upon him was justified. The Certified Works Standing Orders of the Tata Refractories Limited Belpahar though not marked in this case, a copy of the same is available on record, the Order No. 21 describes the acts of misconduct under Clause-vi, misconduct includes habitual late attendance and habitual absence without leave or without permission of the management. The Clause xxix declares that continuous absence without permission and without satisfactory cause for more than 10 days amounts to misconduct. In the present case the workman has remained absent from duty on several occasions without permission or leave of the management. The Order No. 22 of the Certified Works Standing Order prescribes punishment to a workman for misconduct. As per 22 (b) the company in its discretion give the workman, the punishment of censure, warning, suspension without pay,

withholding increment, reduction in pay, demotion to lower rated job, etc. in lieu of dismissal. In the present case it is proved that the workman was staying at a long distance and for a certain period he was hospitalised for fracture of rib bones. The second party workman was mainly a Helper and he was not technical staff. The management has not adduced any evidence that due to absence of the workman from duty there was any substantial loss to the company or that its regular business was affected. It is well settled that penalty measure must be commensurate with the gravity of misconduct and any penalty disproportionate to the gravity of misconduct is violative of Article 14 of the Constitution. Reference in this context is made to the case of *Bhagat Ram Vrs. State of Himachal Pradesh* reported in AIR 1983, SC 454. In the present case, the act of misconduct proved against the workman was not so grave so as to dismiss him from service. The management had option to impose other punishments as prescribed under Order 22(b) in lieu of dismissal of the workman. Considering the nature and gravity of the misconduct of the workman and the discussions made above I am constrained to hold that the major punishment imposed upon the workman, i.e. dismissal from service with effect from the 21st April 2001 is unjustified. The issue No. (ii) is accordingly answered in favour of the workman.

12. *Issue No. (iii)*—Since it is found that the punishment of dismissal imposed upon the workman is not justified and proportionate to the alleged act of misconduct, I feel this is a fit case to exercise the power under Section 11(A) of the I.D. Act. The dismissal of the workman needs to set aside and the management should be directed to reinstate him in service. However, considering the fact that the workman was in the habit of remaining absent from duty unauthorisedly and he did not change his attitude even after several punishment, I feel it will not be proper to ask the management to pay back wages to him. Hence the issue No. (iii) is answered in favour of the workman and the following Award :

AWARD

The reference is answered on contest in favour of the workman but without any cost. The dismissal of Shri Pitambar Tandia, ex Senior Attendant of High Alumina Department from services by the management of Tata Refractories Ltd., Belpahar with effect from the 21st April 2001 is held illegal and unjustified. The management is directed to reinstate the workman in service within one month from date of publication of the Award.

Dictated and corrected by me.

SRIKANTA MISHRA
7-12-2012
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
7-12-2012
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
J. DALANAYAK
Under-Secretary to Government